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SEP 24 2004

OFFICE OF PETITIONS

In re Application of	:	
Achilefu et al.	:	
Application No. 10/800,531	:	DECISION REFUSING STATUS
Filed: March 15, 2004	:	UNDER 37 CFR 1.47(a)
Attorney Docket No. MRD/64CP	:	

This is in response to the petition under 37 CFR 1.47(a), filed July 30, 2004 (certificate of mailing July 27, 2004). Applicants obtained a one-month extension of time to reply. Accordingly, the petition is filed timely.

The petition is dismissed.

Applicants are given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on March 15, 2004, without an executed declaration. Accordingly, on April 27, 2004, the Office mailed a "Notice to File Missing Parts of Nonprovisional Application," requiring an executed declaration and a surcharge for the late filing of the declaration.

In response, on July 30, 2004 (certificate of mailing July 27, 2004), applicants filed the present petition, a declaration signed by 4 out of 5 joint inventors, and paid the necessary fees.

In the Declaration of Facts, Tammy Torres stated that Dr. Achilefu indicated receipt of the Declaration and Assignment for another pending U.S. Application, No. 10/680,338, but was unwilling to review the documents without compensation. Ms. Torres further stated that based on Dr. Achilefu's comments and position with regard to Application No. 10/680,338, no further attempts were made to pursue his execution of the same documents for the subject application.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicants lack item (1) as set forth above.

As to item (1), Dr. Achilefu was not presented with a copy of the complete application papers for the subject application. Unless Dr. Achilefu was presented with a complete copy of the application papers, including the specification, claims and drawings, he could not attest that he has "reviewed and understands the application papers," and therefore, could not sign the declaration that he was given. Accordingly, applicants failed to show or provide proof that Dr. Achilefu, the nonsigning inventor, has refused to sign the declaration. See MPEP 409.03(d). To show that the inventor has refused to join in the application, applicants must show that a complete copy of the application papers, including the specification, claims and drawings, was presented to Dr. Achilefu, personally or through his designated representative, and that he did not respond to the request that he sign the declaration.

Further correspondence with respect to this matter should be addressed as follows and **to the attention of Christina Tartera Donnell, Senior Petitions Attorney:**

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, Mail Stop Petition
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-2895.

Christina Tartera Donnell

Christina Tartera Donnell
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